No. 258

In the Supreme Court of the United States

OCTOBER TERM, 1948

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE PITTSBURGH STEAMSHIP COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on April 5, 1948 (R. 867), denying enforcement of an order issued by the Board against The Pittsburgh Steamship Company (R. 856-857).

OPINIONS BELOW

The opinion of the Court of Appeals (R. 867-872) is reported in 167 F. 2d 126. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 854-857) are reported in 69 N.L.R.B. 1395.

JURISDICTION

The judgment of the Court of Appeals was entered on April 5, 1948 (R. 867). The Board's petition for rehearing (R. 873-902) was denied on June 4, 1948 (R. 903). The jurisdiction of this Court is invoked under Section 1254 of 28 U.S.C., as codified June 25, 1948, and Section 10(e) and (f) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether a trial examiner, by crediting the witnesses called by the Board and discrediting the witnesses called by the employer on those matters as to which there was a conflict of testimony, manifests such bias and prejudice as to warrant a court in setting aside an order of the Board based upon findings of the trial examiner which were adopted by the Board, without the court determining that there is no substantial evidence to support the findings.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 20-24.

STATEMENT

Upon an amended charge duly filed by the National Maritime Union, C.I.O., hereinafter called the Union (R. 1-2), the Board, on July 10, 1945, issued its complaint alleging that The Pittsburgh Steamship Company, hereinafter called the Com-

pany, had engaged in certain conduct violative of Section 8 (1) and (3) of the National Labor Relations Act (R. 4-6). The Company, in its answer, denied the material allegations in the complaint (R. 6-7). Hearings were thereafter held before a Trial Examiner of the Board on July 26-28, 1945, August 28 to September 5, 1945, and October 2, 1945 (R. 800). At the hearings most of the issues were sharply contested, and considerable testimony was offered by both sides. A great deal of such testimony was contradictory, and the determination as to whether certain statements were made and events occurred was dependent upon the resolution of the credibility of the witnesses.

Thereafter, the Trial Examiner issued his intermediate report (R. 799-843), finding that the Company, by the statements and actions of its officers and supervisory personnel, interfered with, restrained and coerced its employees in violation of Section 8 (1) of the Act, and discriminatorily discharged Howard Shartle in violation of Section 8 (3) of the Act (R. 823-839). The Trial Examiner found in those instances mentioned in his intermediate report as a basis for unfair labor practice findings that where there was a conflict in the testimony the witnesses called by the Board were more credible than those called by the Company. In some situations, not specifically mentioned in the intermediate report, he apparently rejected the testimony given by the witnesses called by the Board and accepted the Company's version of what

had occurred or been said (R. 807, n. 6). These are described in some detail in the Board's petition for rehearing (R. 878-886).

Exceptions were thereafter filed by the Company (R. 846-852), briefs were submitted (R. 855), and oral argument heard by the Board (R. 854). After reviewing and considering the entire record in the case, the intermediate report, the exceptions, briefs and argument (R. 855), the Board issued its decision and order on August 13, 1946 (R. 854-857), wherein it adopted the findings, conclusions and recommendations of the Trial Examiner, with certain minor corrections and additions (R. 855). The order directed that the Company cease and desist from discouraging membership in the Union or any other labor organization, and from in any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them under Section 7 of the Act; that the Company offer reinstatement to the discriminatorily discharged employee, Howard Shartle, and make him whole for any loss of wages; and that the Company post the usual compliance notices on each of its ships (R. 856-857).

The Company filed with the court below a petition to review the Board's decision and order (R. 860-861), and the Board answered and requested enforcement of its order (R. 862-866). On April 5, 1948 the court below issued its decision and entered its judgment setting aside the Board's order (R. 867). The Board filed a petition for

rehearing (R. 873-902), which was denied without opinion on June 4, 1948 (R. 903).

The court below based its decision denying enforcement of the Board's order upon the one-sided nature of the trial examiner's rulings on credibility, which the court held showed that the trial examiner was biased and prejudiced. The court did not pass upon the substantiality of the evidence to support the Board's order. The court stated (R. 871-872):

> Courts have recognized that it is contrary to human experience that all witnesses on one side of a case are falsifiers while those on the other side are all truthful, * * *. It is enough to say that the unvarying repudiation of every witness for the [Company] because of falsity, evasion or faint recollection, along with the consistent exaltation of every union witness as truthful, forthright and accurate, destroys completely any confidence that might otherwise be placed in the findings of the trial examiner and stamp them as arbitrary. The Labor Board having adopted them *in toto* its blanket *pro forma* findings are in no better posture. It is true that courts have sometimes affirmed the Board's orders while severely criticizing the attitude of the examiner, but in such cases the Board's findings were independently made with exacting analysis of the evidence upon which they rest, and a judicious screening of unsupported findings. This is not the situation here. With due respect for the rule that the findings of the Board

are binding upon us if based upon evidence, it becomes impossible to sustain an order upon the adoption of a trial examiner's report which, upon its face, so clearly bears the imprint of bias and prejudice that it lacks all semblance of fair judicial determination.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that bias and prejudice on the part of the Trial Examiner can be inferred solely from the Trial Examiner's rulings in the case.

2. In holding that the Trial Examiner by crediting the witnesses called by the Board and discrediting the witnesses called by the Company manifested bias and prejudice.

3. In holding that the Trial Examiner resolved all issues of credibility in favor of witnesses called by the Board.

4. In refusing enforcement of the Board's order without determining that there was no substantial evidence to support the Board's findings.

5. In holding that the Board's order should not be enforced because its findings were not independently made, but were instead an adoption of the Trial Examiner's findings which the court below believed to lack all semblance of fair judicial determination.

6. In failing to enforce those portions of the

Board's order which were supported by undisputed evidence.

7. On the basis of its conclusion that the Trial Examiner was biased, in failing to remand the case to the Board for an independent reevaluation of the evidence.

8. In refusing to enforce the order of the Board.

REASONS FOR GRANTING THE WRIT

The court below found that the Trial Examiner had credited all the Board's witnesses and discredited all the Company witnesses in every instance where there was a conflict of testimony (R. 870-872). The record shows, however, that the Trial Examiner did not determine all questions of credibility in the Board's favor; the findings state explicitly that the incidents charged which he regarded as "unsupported by a fair preponderance of credible evidence" are not mentioned (R. 807, n. 6).[1] Furthermore, the Trial Examiner's findings on their face manifest a painstaking and conscientious analysis of the evidence in support of his conclusions. A study of the testimony of the witnesses whose testimony was in conflict will, we submit, demonstrate, even without regard for the Trial Examiner's advantage in seeing and hearing the witnesses, that his findings as to credibility

[1] See the Board's petition for rehearing (R. 878-886) for a reference to such incidents.

were plainly correct in many important instances.[2]

In view of the reasons advanced by the court below in support of its decision, however, we shall assume for the purposes of the remainder of this petition that the court below was correct in stating that the Trial Examiner credited all the witnesses for the Board and discredited the Company's witnesses wherever there was a conflict in the testimony. Even if this were true, we submit that the court below erred in determining solely from this fact that the Trial Examiner was biased and prejudiced. For the reasons hereinafter set forth, this error is sufficiently important to warrant correction by this Court.

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[2] We do not mean to suggest that the Trial Examiner's findings were not correct in other instances, but only that as to some of the witnesses a reader of the bare printed record cannot readily determine which were telling the truth. It is because of this very difficulty in determining from the mere printed record which of two witnesses making conflicting statements is telling the truth that great weight is given to the findings of the official who actually hears the testimony. But significantly, in the present case, the bare printed record of the testimony of many of the witnesses whom the Trial Examiner found to be unreliable supports his conclusions. See, in particular, the testimony of Captain Gerlach (R. 306-332), Captain Murray (R. 673-696), Chief Engineer Hunger (R. 628-648), First Mate Dobson (R. 498-522), Captain Lawless (R. 465-498), and Captain Brinker (R. 416-436). The deficiencies in their testimony are accurately pointed out in the Trial Examiner's report (R. 807-823, 830-833). It is also to be observed as to many of the incidents in question that the opposing versions did not differ greatly in substance, and that even the evidence of the Company witnesses would have been sufficient to support the Board's finding of unfair labor practices. (See, for example, R. 814, 807-808). In addition, as to a number of incidents the testimony supporting the findings was not disputed by any witness. See the testimony as to the incidents on the steamers *Horace Johnson* and *McGonagle* (R. 811-814).

1. The decision of the court below is in conflict with decisions of the Fourth, Fifth, Seventh and First Circuits. *West Virginia Glass Specialty Co. v. National Labor Relations Board*, 134 F. 2d 551, 552 (C.C.A. 4), certiorari denied, 320 U. S. 738; *National Labor Relations Board v. Robbins Tire & Rubber Co.*, 161 F. 2d 798, 800 (C.C.A. 5); *National Labor Relations Board v. Auburn Foundry, Inc.*, 119 F. 2d 331, 333 (C.C.A. 7); *National Labor Relations Board v. Bird Machine Co.*, 161 F. 2d 589, 590-591 (C.C.A. 1).

The Court of Appeals for the Seventh Circuit, in *National Labor Relations Board v. Auburn Foundry, Inc.*, 119 F. 2d 331, found that the Board had actually credited its own witnesses as against the employer's witnesses in every instance wherein there was a conflict of testimony. Thus the Seventh Circuit faced a question identical to the one the court below thought was involved in the instant case. However, the Seventh Circuit did not believe that to credit all of the Board's witnesses and to discredit all the employer's witnesses was evidence of bias and prejudice, and enforced the Board's order except as to one provision which it found was not supported by substantial evidence. In reaching its decision the court stated (119 F. 2d at p. 333):

> * * * in every instance where there was a conflict on a material matter between a witness for the Board and the * * * respondent, the Board gave credit to its own witness and found, as a fact, that such witness was stating

> the truth. A reading of the record leaves no room for doubt but that the situation is as charged. *But even so, we do not think it is within our province to say that the Board was not within its legal right. The Board apparently has the right to place its stamp of approval upon its own witnesses as against the world,* if it so desires. [Italics supplied]

The same question was recently raised before the Court of Appeals for the Fifth Circuit in *National Labor Relations Board* v. *Robbins Tire & Rubber Co.*, 161 F. 2d 798. Although the court did not indicate whether or not it agreed with the employer that the trial examiner had credited the witnesses called by the Board whenever there was a conflict in the testimony, the court held that such one-sided credibility determinations by the trial examiner or the Board did not furnish a basis for a finding of bias and prejudice.[3] The court accordingly enforced the Board's order, stating (161 F. 2d, at p. 800):

> * * * [the function of the court under the Act] is to determine whether the Board's findings are supported by evidence and the order is in accordance with law. Of course, even though the findings were supported by evidence, we could not find the order in accord-

[3] The Fifth Circuit had applied this rule in earlier cases. *Continental Box Co.* v. *National Labor Relations Board*, 113 F. 2d 93, 96 (C.C.A. 5); *Jacksonville Paper Co.* v. *National Labor Relations Board*, 137 F. 2d 148, 150 (C.C.A. 5), certiorari denied, 320 U. S. 772.

ance with law if it appeared that the hearings were conducted unfairly * * *. The fact alone, however, of which Respondent makes so much, that Examiner and Board uniformly credited the Board's witnesses and as uniformly discredited those of the Respondent, though the Board's witnesses were few and the Respondent's witnesses were many, *would not furnish a basis for a finding by us that such a bias or partiality existed and therefore the hearings were unfair.* Unless the credited evidence * * * carries its own death wound, that is, is incredible and therefore, cannot in law be credited, and the discredited evidence, * * * carries its own irrefutable truth, that is, is of such nature that it cannot in law be discredited, *we cannot determine that to credit the one and discredit the other is an evidence of bias.* [Italics supplied].

In *West Virginia Glass Specialty Co. v. National Labor Relations Board*, 134 F. 2d 551, certiorari denied, 320 U. S. 738, the Court of Appeals for the Fourth Circuit rejected the identical argument made by the Company in the instant case and held that it was immaterial that the Board had actually credited all of the witnesses called by the Board and discredited all the witnesses called by the employer. The Fourth Circuit stated (134 F. 2d, at p. 552):

> These arguments might be pertinent and persuasive if we were considering the evidence in an equity case or the finding of a judge sitting

without a jury in a case at law. In those cases it would be our duty to decide whether the findings were clearly erroneous, and if so, to reverse the judgment. But such is not our function in reviewing the findings of the National Labor Relations Board. In so doing it is beyond our power to resolve conflicts in the evidence or even to inquire whether the findings of the Board are so clearly erroneous that an injustice has been done.

2. We believe that by reaching the conclusion that it did in the instant case, that is, that the Trial Examiner's findings on credibility indicated a prejudicial prejudgment of the issues, the court below disregarded the well established rule that bias may not be predicated solely upon rulings in the case at bar.[4] The bias which must be shown to justify setting aside the determinations of a trial officer must be based upon "a direct, personal, substantial, pecuniary interest" in the outcome of the case, absent which there is no denial of due process. *Tumey* v. *Ohio*, 273 U. S. 510, 523. Cf. *National Labor Relations Board* v. *Baldwin Locomotive Works*, 128 F. 2d 39, 45 (C.C.A. 3) and especially the concurring in part opinion of Judge Clark at p. 57.

Most of the cases in which bias and prejudice have been charged against a judge or administra-

[4] *Berger* v. *United States*, 255 U. S. 22, 31; *Ex Parte American Steel Barrel Co.*, 230 U. S. 35, 43-44. Cf. *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 237, reversing in this respect, 151 F. 2d 854, 870 (C.C.A. 8).

tive tribunal revolve around the question of attempted disqualification of the judge or officer alleged to be biased. In such cases it is well established that to justify disqualification the bias must be a personal one, based upon extraneous factors *dehors* the record itself, which would prevent the judge or official from exercising his functions impartially. *Ex Parte American Steel Barrel Co.*, 230 U. S. 35, 43-44; *Berger* v. *United States*, 255 U. S. 22, 31; *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 237; *Walker* v. *United States*, 116 F. 2d 458, 462 (C.C.A. 9); *Marquette Cement Company* v. *Federal Trade Commission*, 147 F. 2d 589, 592 (C.C.A. 7), affirmed, *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 700-703; *Henry* v. *Speer*, 201 Fed. 869, 872 (C. C. A. 5); *Parker* v. *New England Oil Corp.*, 13 F. 2d 497, 498 (D. Mass.); *Ex Parte N. K. Fairbank Co.*, 194 Fed. 978, 992 (M. D. Ala.). In the *Berger* case, *supra*, this Court said, "* * * the bias or prejudice which can be urged against a judge must be based upon something other than rulings in the case" (255 U. S. at p. 31). In *Parker* v. *New England Oil Corp.*, *supra*, the court stated that, "a judicial opinion, formed upon legal evidence, offered in open court in the hearing of a case is not 'personal bias or prejudice' * * * no matter how adverse or severe it may be upon the party concerned" (13 F. 2d, at p. 498).

Neither the court below nor the Company have suggested that the Trial Examiner's actions or rul-

ings during the conduct of the hearing, or his interrogation of witnesses, were arbitrary and prejudicial.[5] Compare *Inland Steel Company* v. *National Labor Relations Board*, 109 F. 2d 9, 20-21 (C.C.A. 7); *National Labor Relations Board* v. *Washington Dehydrated Food Co.*, 118 F. 2d 980, 985-997 (C.C.A. 9); *Montgomery Ward & Co.* v. *National Labor Relations Board*, 103 F. 2d 147, 149-157 (C.C.A. 8). Nor is there any contention that by overt acts outside the record the trial examiner had exposed his bias against the company. Compare *Berkshire Employees Ass'n, etc.*, v. *National Labor Relations Board*, 121 F. 2d 235, 238-239 (C.C.A. 3). The only basis for the finding of bias by the court below is the Trial Examiner's rulings on credibility, and the authorities cited above prove that such rulings cannot constitute bias no matter how erroneous they may be. *Bitokumsky* v. *Tod*, 263 U. S. 149, 157. A standard of fairness which is sufficient for the federal judiciary can hardly be said to violate due process when applied to the examiners of an administrative agency. Cf. *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 236-237.

3. The opinion of the court below does not reject any of the Trial Examiner's findings on credibility as unsupported by substantial evidence. The court determined only that since the intermediate report

[5] The record plainly demonstrates the judicial nature of the examiner's conduct.

of the Trial Examiner "upon its face". (R. 872) credited all the witnesses for the Board, the rulings as to credibility could not have been impartial. We submit that by so doing the court below exceeded its authority under Section 10(e) and (f) of the Act.

It is well settled that if there is substantial evidence to support any of the Board's findings a court of appeals cannot reject such findings upon review. *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105. And that is so even when the court may feel that if it were the original trial tribunal it would have found exactly to the contrary. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 596-597. It is only when "all reasonable men, exercising an unprejudiced judgment, would draw an opposite conclusion from the facts" (*Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 566; *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S 292, 300) that a court may set aside an administrative order because of insufficient evidence. However, the court below, in the instant case, did not attempt to review the Board's findings or to determine whether there was evidence to support them. It decided that as a matter of law the entire case must fall because of what appeared to be prejudiced rulings on credibility by the Trial Examiner. We believe that by so doing, and in basing its conclusions as to prejudice entirely upon the rulings on the evidence, the court

was in fact creating an important exception to the substantial evidence rule generally applicable to judicial review of administrative decisions. That rule is, of course, embodied in Section 10 (e) and (f) of the National Labor Relations Act.

4. We further submit that the alleged legal maxim upon which the court below bottomed its decision, that "* * * it is contrary to human experience that all witnesses on one side of a case are falsifiers while those on the other side are all truthful * * *" (R. 871), is without foundation and contrary to recognized legal doctrine. The only authority cited by the court below in support of this theory is a dictum from *National Labor Relations Board* v. *A. Sartorious & Co.*, 140 F. 2d 203, 205 (C.C.A. 2). But compare the *Auburn Foundry* and *Robbins Tire & Rubber Co.* cases, *supra*, pp. 9-11. Indeed in any case in which all the witnesses on one side agree as to the facts of an incident in contradiction to the witnesses on the other side, it necessarily follows that one group of witnesses or the other is telling an untruth, and that the trier of the facts is entitled to believe one or the other in its entirety. Unless a judge or other trier of the facts could so find, he might be unable to decide such a case. It is not at all inconceivable that a similar situation may arise with respect to witnesses engaging in a common course of conduct pursuant to an organized plan, such as the Board found to exist in the instant case (R. 824) and

such as could frequently occur in conspiracy and antitrust as well as labor relations cases. Certainly the courts cannot assume as a matter of common knowledge, or take judicial notice, that no such situation can exist, although that is what the court below has done here.

It is thus clear that there can be no such rule as the court below relied on, and that an impartial and fair-minded judicial officer may actually determine upon his observation of the witnesses and the hearing of their testimony that all witnesses on one side may be more truthful than all those on the other side. As the courts have stated, "It is impossible to prescribe any fixed rule by which the credibility of the witness is to be tested, or which shall bind the conscience of the court as to the conclusiveness of the evidence in a given case * * *." *United States* v. *Lee Huen*, 118 Fed. 442, 459 (N.D. N. Y.). To the same effect see IX *Wigmore, Evidence*, Sec. 2551, p. 503. See also, *Davis* v. *Schwartz*, 155 U. S. 631, 636.

5. It is important not only to the administration of the National Labor Relations Act, but to the entire field of administrative law, that this Court take jurisdiction and review the decision of the court below in the instant case. The decision, if permitted to stand, may have an adverse effect not only upon the trial examiners of the Board but upon all hear-

ing officers whose cases may be reviewed by the Sixth Circuit.[6]

The normal objectives of rules governing judicial administration is to free trial officers and judges from all extraneous influences which might tend to induce them to decide issues otherwise than in accordance with their honest and impartial judgment. The rule here enunciated by the Sixth Circuit, however, operates quite to the contrary. It erects an artificial barrier to honest and impartial resolution of issues of credibility by saying that if the judge dares to credit all the witnesses on one side, even if he honestly believes them to be the more truthful, he is *ipso facto* guilty of bias. Hearing officers faced with the alternative of inviting a charge of bias or crediting a witness whom they do not honestly believe may be tempted to follow the latter course. Such results, we believe, are incompatible with the objectives which sound principles of judicial administration should foster.

CONCLUSION

Because of the conflict of the decision below with decisions of other courts of appeals, the failure

[6] Judges and juries are not as likely to face this problem as administrative officers, since they are not required to set forth in such great detail each and every resolution of conflicting testimony and their reasons for decision. It is interesting, however, to note in this respect a statement by Professor Edmund M. Morgan that, "a distinguished United States district judge suggested to the writer that the assignment of such a reason [failure to meet the burden of proof] might frequently be due to the desire of the judge to avoid unpleasant reflections upon witnesses and parties whose testimony he had in fact discredited." Morgan, *Choice of Law Governing Proof*, 58 Harvard Law Review 153, 191, n. 89.

of the court below to follow established rules, and the importance of the decision in the field of administrative determination, it is respectively submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

ROBERT N. DENHAM,
General Counsel,
National Labor Relations Board.

SEPTEMBER, 1948.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such un-

fair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or

wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a

part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading

and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

* * * * *

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